



June 8, 2000

Mr. Wyman Hopkins
Administrative Sergeant
City of Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-2255

Dear Mr. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136168.

The City of Rosenberg Police Department (the "department") received a request for the "records" of case number 99-26851. You have provided for our review an offense report. You seek to withhold "the body of the report."¹ You assert that this information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that the report itself indicates that information also exists in the form of photographs and on audiotape (*see* pp. 4 and 5 of the report). Because the requestor seeks "records" of "case number 99-26851," we believe that the photographs and information on audiotape constitute information that is responsive to the request. *See* Open Records Decision No. 561 at 8 (1990) (governmental body must make a good faith effort to relate a request to information which it holds); *see also* Gov't Code § 552.002(b)(1), (2), (4) (the media on which public information is recorded includes paper, film, and tape). You did not submit the photographs or audiotape for our review, nor do you indicate that the information

¹Although you state that "the requestor has been furnished with all other portions of the requested information that we believe are open to the public," you do not indicate whether you have released any portion of the submitted report to the requestor, nor do you otherwise describe the information that you have released. You have highlighted the "incident narrative" heading in the report and added a notation of "552.108(a)(2)." We thus find it likely that this is the portion of the report you seek to withhold, and that you may have already released the remainder of the report to the requestor. However, if this is the case, and as discussed below, we note that you may have already released information that must not be publicly released. *See* Gov't Code § 552.352; *see also* below the discussion of the social security and driver's license numbers.

submit the photographs or audiotape for our review, nor do you indicate that the information you did submit to this office comprises a representative sample of the responsive information. See Gov't Code § 552.301(e)(1)(D) (governmental body must submit to attorney general the specific information requested, or representative samples if a voluminous amount was requested). Thus, with respect to the photographs, audiotape and any other information that is responsive to the request that you did not submit for our review, you did not properly comply with section 552.301. In pertinent part, section 552.302 provides that if a governmental body does not request an attorney general decision as provided by section 552.301, the responsive information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Because you have not demonstrated a compelling reason to withhold the responsive information that you did not submit to this office, we determine that you must release that information to the requestor.² We next address the information that you have submitted for our review.

You assert that the information you have marked is excepted from disclosure under section 552.108(a)(2) of the Government Code. In relevant part, section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*,

²You have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below. See also Gov't Code § 552.352.

§ 551 S.W.2d 706 (Tex. 1977). We note the submitted information does not explain on its face how and why its release would interfere with law enforcement. Moreover, you neither assert nor do you argue the applicability of section 552.108(a)(1) to the information at issue. As to the section 552.108(a)(2) assertion, you state that the “investigation has been concluded, but *has not* been adjudicated and therefore *has not* resulted in a conviction or deferred adjudication” (emphasis added). This statement implies that although the investigation has concluded, prosecution of this matter may be pending. You do not otherwise advise this office of the status of the case. The submitted information indicates a named individual was arrested and charged with a criminal offense on February 16, 2000. Section 552.108(a)(2) applies to information that *did not result* in a conviction or deferred adjudication. Under the circumstances (a recent arrest and no indication of the disposition of the case), we cannot assume that the matter has reached a final result other than conviction or deferred adjudication. We therefore conclude that you have not demonstrated the applicability of section 552.108(a)(2) to the submitted information. Because you make no additional arguments or representations with reference to the section 552.108 claim, we conclude that the information is not excepted from disclosure under section 552.108.

We note, however, that the submitted documents contain social security numbers which may be confidential, and driver’s license numbers which you must withhold. The social security numbers we have marked are confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994).³ Absent a provision of law enacted on or after October 1, 1990 that requires the department to obtain or maintain the social security numbers we have marked, you must release the social security numbers. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130. We have marked the information that you must withhold under section 552.130.⁴ The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes.

⁴Assuming the social security numbers were obtained or maintained by the department pursuant to a provision of law enacted on or after October 1, 1990, and that the social security numbers therefore must be withheld as confidential, and with reference to the driver’s license numbers, we note that we have not marked for redaction the social security number or driver’s license number of the requestor. We believe the requestor has a special right of access to this information, beyond the right of the general public, pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023.


This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 136168

Encl. Submitted documents

cc: Mr. Pablo Paez
1005 Avenue D
Rosenberg, Texas 77471
(w/o enclosures)